United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/899
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 899

Case No. 970: RANDALL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, First Vice-President, presiding; Ms. Deborah Taylor Ashford, Second Vice-President; Mr. Chittharanjan Felix Amerasinghe;

Whereas at the request of Evelyn Nana Randall, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 April 1997, the time-limit for the filing of an application to the Tribunal;

Whereas, on 29 April 1997, the Applicant filed an application requesting the Tribunal, inter alia:

"6. ... to find that:

(i) The failure of the Respondent to have her personnel records complete, up-to-date, and submitted in a timely manner to the relevant promotion bodies, including the Appointment and Promotion Board, in connection with her application for the P-5 post of Chief, Operational Accounts Section, Department of Administration and Management (DAM) ... [and other posts], was a violation of her right to due process.

(ii) The decision of the Secretary-General to select another candidate other than the Applicant for the P-5 post of Chief, Operational Accounts Section, [DAM], in 1994 violated her right to due process.

...

7. ... [T]o order the Respondent to:

(i) Promote the Applicant ... to a P-5 level post commensurate with her qualifications, experience, performance and seniority.

(ii) Implement fully the recommendation of the Joint Appeals Board for compensation in the amount of three months net base salary. ... In other words, to pay the Applicant three months net base salary less the amount of $500 paid to her in December 1996, as compensation.

(iii) Complete the Applicant's Performance Evaluation Reports (PERs), covering the periods 11 July 1992 to 8 May 1993, and 23 June 1993 to 31 March 1996, which, as of the date of this application are still pending.

8. ... [And further to] order that:

(i) [If] the Secretary-General is unable to take the necessary executive action to promote her, ... the Applicant should be granted compensation in the amount of one year of her net base salary ...

(ii) In addition ... the Respondent should make every effort to have the Applicant fairly and seriously considered for promotion, as soon as possible, to a P-5 post for which she is qualified."

Whereas the Respondent filed his answer on 29 July 1998;

Whereas, on 18 September 1998, the Applicant informed the Tribunal that, on 1 August 1998, she had been promoted to the P-5 level post of Chief, Trust Fund, Technical Cooperation and Revenue Section, Office of Programme Planning, Budget and Accounts, DAM, and thus, she had decided to withdraw the pleas set forth in paragraphs 7(i) and (iii), and 8(i) and (ii) of her application, quoted above;

Whereas the Applicant filed written observations on 21 September 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 11 November 1974, on a two-year fixed-term appointment as Associate Accountant, at the P-2 level, in the Accounts Division, Office of Financial Services. Her fixed-term appointment was extended until 1 August 1977, when she was granted a permanent appointment and promoted to the P-3 level. On 1 August 1985, she was promoted to the P-4 level. From 21 June to 30 November 1989, the Applicant was assigned to UNTAG, Namibia, as Electoral Supervisor. She was temporarily assigned to UNIFIL, from 15 June to 31 August 1990, as Acting Chief Finance Officer. From 24 April 1991 to 22 June 1993, the Applicant was assigned to the United Nations Iraq-Kuwait Observer Mission (UNIKOM), as Chief Finance Officer.

On 7 July 1993, the Chief Military Observer, UNIKOM, sent the Applicant's performance evaluation report (PER) for the period from 24 April 1991 to 8 March 1993 to the Director, Field Operations Division, UNIKOM Headquarters. In a cover memorandum, the Chief Military Observer, noted his strong disagreement with the First Reporting Officer's ratings for the Applicant and attached a copy of his predecessor's comments on the staff member's first year of service with UNIKOM. On 9 September 1993, the Applicant submitted a statement of rebuttal against that PER. On 21 March 1994, the Applicant submitted additional information to the Rebuttal Panel.

On 19 April 1994, the Applicant applied for the vacant P-5 post of Chief, Operational Accounts Section, DAM.

On 13 May 1994, the Rebuttal Panel issued its report recommending that "the [Applicant's] PER was so obviously and grossly unfair, biased and vindictive that it should be withdrawn in toto and a new report drawn up".

On 28 July 1994, the Applicant sent to the Secretary, Appointment and Promotion Board (APB), additional information in support of her candidacy for the post of Chief,

Operational Accounts Section. On 2 September 1994, the Secretary of the APB informed the Applicant that she had not been selected for that post.

By memorandum dated 5 September 1994, the Under-Secretary-General for the Department of Peace-keeping Operations (DPKO) informed the Assistant Secretary-General for Human Resources Management that he concurred with the conclusion in the Rebuttal Panel's report dated 13 May 1994, that the Applicant's PER for her service in UNIKOM should be withdrawn. He further recommended that "a new [PER] be prepared by the then Chief Military Observer, [UNIKOM]".

On 19 September 1994, the Applicant wrote to the Secretary-General requesting a review of the administrative decision not to promote her to the position of Chief, Operational Accounts Section. By memorandum dated 19 September 1994, the Personnel Officer, Staff Administration & Monitoring Services informed the Applicant of the recommendation by the Under-Secretary-General, DPKO, that her contested PER be withdrawn and that a new PER be prepared. On 26 September 1994, the Applicant again wrote to the Secretary-General requesting him to take into account this new development in reviewing the decision not to promote her to the post for which she had applied. In the absence of a reply to her request for review, on 14 November 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 10 March 1995, a former Chief Military Observer, UNIKOM, completed a PER covering part of the Applicant's service with UNIKOM, from 24 April 1991 to 10 July 1992.

The JAB adopted its report on 9 July 1996. Its conclusions and recommendation read as follows:

> "45. In light of the foregoing, the Panel unanimously agreed that the decision of the Secretary-General to select a candidate other than the Appellant for the P-5 post of Chief, Operational Accounts Section, DAM, violated the Appellant's right to due process.

46. The Panel unanimously recommends that the Respondent make every effort to have the Appellant fairly and fully considered for promotion, as is her right, at the earliest possible date, to a vacant P-5 post for which she is qualified.

47. The Panel unanimously recommends that the new PER covering the Appellant's performance for the period 24 April 1991 through 8 March 1993 be prepared without further delay.

48. The Panel unanimously recommends that the Appellant be compensated in the amount of three months of her net base salary for the violation of her right to have her personnel records complete, up-to-date, and submitted in a timely fashion to the Departmental Review Panel and the APB.

49. The Panel further recommends that the cost of the compensatory payment be reimbursed to the Organization, under staff rule 112.3, by those officials directly responsible for the negligent treatment of the Appellant.

50. The Panel unanimously agreed to make no further recommendation in support of the appeal."

On 31 October 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report and has taken note of the conclusions and recommendations of the Panel. The Secretary-General is not in agreement with the Panel that the decision not to select you for the post in issue was a violation of your right to due process. The Secretary-General is of course in agreement with the Panel that you should be fairly and fully considered for promotion at all times for any vacant P-5 post for which you apply and are found to be qualified. Although the record is clear that a performance evaluation report has been completed and signed by you for part of the period mentioned by the Panel, 24 April 1991 through 8 March 1993, the Secretary-General is in agreement and will ensure that a PER covering the remaining period is prepared without further delay.

The Secretary-General has taken note of the finding of the Panel that your personnel records were not complete, up-to-date and submitted in a timely fashion to the Departmental Review Panel and the Appointment and Promotion Board. He has also noted the recommendation of the Panel that you be compensated in the amount of three months of your net base salary. The Secretary-General has decided to accept the findings of the Panel but not its recommendation regarding compensation. He has decided, however, to compensate you in the amount of $500.00 for the fact that your personnel records were not complete, up-to-date and submitted in a timely fashion to the Departmental Review Panel and the Appointment and Promotion Board.

The Secretary-General is also taking steps to ensure that the personnel records of all staff members are brought up-to-date immediately.

The Secretary-General has taken note of the Panel's recommendation regarding reimbursement by responsible officials of the compensation payment. Although acknowledging the principle behind the Panel's recommendation, the Secretary-General is not in agreement that the circumstances of your case warrant the application of the staff rule.

..."

On 29 April 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant was denied due process before the APB because her personnel records were not up-to-date when she applied for the post of Chief, Operational Accounts Section.

2. The Respondent unduly delayed the finalizing of her PER for the period 21 April 1991 to 8 March 1993, which significantly curtailed her chances of receiving fair consideration for posts for which she applied.

3. The $500.00 awarded to the Applicant was inadequate compensation for the injury that she suffered.

Whereas the Respondent's principal contentions are:

1. The Applicant has no right to promotion.

2. The Applicant was given fair and full consideration by the appropriate promotion bodies in connection with her candidature for vacant posts. The unavailability of the Applicant's PERs for submission to the appropriate promotion bodies was not a denial of her right to due process.

The Tribunal, having deliberated from 28 October to 20 November 1998, now pronounces the following judgement:

I. The case arises from the failure of the Respondent to promote the Applicant, in September 1994, from the P-4 level to a P-5 position for which she had applied on 19 April 1994. The Applicant's performance evaluation report (PER) for the period 24 April 1991 through 8 March 1993, had not been submitted to the Appointment and Promotion Board. The PER for that period had been challenged by the Applicant on 9 September 1993. The Rebuttal Panel, in its report dated 13 May 1994, concluded that there had been prejudice in the preparation of the PER and recommended that it be withdrawn and that a new report be prepared. It was not until 5 September 1994, that the Under-Secretary-General, Department of Peace-keeping Operations, in whose department the Applicant served, informed the Administration that he concurred that the PER in question be withdrawn and a new one be prepared by the Applicant's Second Reporting Officer. A partial PER for the period 24 April

1991 to 10 July 1992 was not completed until 14 June 1995. In the meantime, the Applicant, after receiving no response to her request for administrative review of the decision not to promote her, on 14 November 1994, filed an appeal with the Joint Appeals Board (JAB). The JAB recommended that the Applicant be compensated in the amount of three months net base salary for the violation of her rights resulting from the absence of up-to-date PERs in her personnel file. The Secretary-General, while agreeing in part with the JAB, decided to compensate the Applicant in the amount of $500. Subsequently, the Applicant applied for two P-5 level vacant posts. She was later promoted to the P-5 level post of Chief, Trust Fund, with effect from 1 August 1998.

II. The issue in the case is whether the Applicant has been wronged in any way in connection with the failure to promote her in September 1994.

III. As the Tribunal has held, a staff member has no right to promotion in the absence of a specific legal obligation creating a corresponding right to promotion (cf. Judgement No. 275, Vassiliou (1981)). The administrative authority has discretion in regard to promotion (cf. Judgements No. 275, Vassiliou, No. 375, Elle (1986), and No. 390, Walter (1987)). However, this discretion is not absolute and must be exercised in such a way that the staff member is accorded fair treatment. The Tribunal has found procedural irregularities to result in unfair treatment in cases where PERs are improperly missing from or improperly considered in the promotion process (cf. Judgements No. 312, Roberts (1983), No. 314, Tomiak (1983)). A procedural irregularity can also arise from the failure to have such reports prepared in time, when such failure precludes their consideration in the promotion process (cf. Judgements No. 198, Lane (1975), No. 412, Gross (1988) and No. 539, Bentaleb (1991)). Thus, the Tribunal has previously held that the lack of sufficient information about a candidate may affect the entire promotion process, as there is no way of knowing how such

lack of information may have influenced the APB's recommendation (cf. Judgement No. 412, Gross, (para. XVI)).

IV. In this case, the Applicant's right to fair consideration and fair treatment in the promotion process for the position for which she applied in April 1994, was prejudiced by the Respondent's failure to prepare in time and take into consideration a proper appraisal report for the period 24 April 1991 to 8 March 1993. The Tribunal notes that the Respondent is required, under the Staff Rules, to prepare timely PERs. The Administration is responsible for the defects in the PER that had been challenged and for the failure to prepare a new PER in a timely manner, which may have resulted in the APB's failure to recommend the Applicant for a post in September 1994. The failure to keep the Applicant's personnel records up-to-date is inexcusable. For this procedural irregularity the Applicant must be compensated, even though there is no certainty that, had the records been available, she would have been selected for promotion. The treatment she was given was unfair and resulted in the violation of her rights. The Tribunal assesses the compensation at six months of her net base salary at the rate in effect on the date of this judgement.

V. The Applicant has since been promoted with effect from 1 August 1998, but this does not absolve the Administration from its responsibility to prepare PERs in a timely manner and thereby ensure fairness in the promotion process.

The Tribunal also notes that the Applicant's subsequent PERs have not been completed. This omission should be rectified so that the Applicant's evaluation records are kept up-to-date. The Tribunal cannot emphasize enough the importance of keeping evaluation records up-to-date, in accordance with the Staff Rules.

VI. For the reasons stated in paragraphs IV and V above, the Tribunal orders the Respondent to pay to the Applicant six months of her net base salary at the rate in effect on

the date of this judgement, less the $500 that the Applicant already received from the Respondent.

VII. The Tribunal rejects all other pleas.

(Signatures)

Mayer GABAY
Fist Vice-President, presiding

Deborah TAYLOR ASHFORD
Second Vice-President

Chittharanjan Felix AMERASINGHE
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/900
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 900

Case No. 973: SALMA

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Maria Salma, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 May 1997, the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 May 1997, the Applicant filed an application requesting the Tribunal, inter alia:

"...

(a) *To rescind* the decision of the Secretary-General by which he rejected the unanimous recommendation of the JAB that the Applicant be awarded six months net base salary in compensation for the denial of her rights to be accorded fair and up-to-date performance reports;

(b) *To find and rule* that the Joint Appeals Board erred as a matter of law and equity in failing to find the existence of harassment and discrimination against the Applicant and to provide appropriate and adequate compensation ...;

(c) *To order* that the Applicant be paid an additional amount equivalent to the value of the two longevity steps which had previously been withheld;

(d) *To order* that the Applicant be given due consideration for promotion to the P-4 level retroactive to 1991;

(e) *To award* the Applicant three years' net base pay and whatever other appropriate compensation is determined by the Tribunal ...;

(f) *To fix* ... the amount of compensation to be paid in lieu of specific performance at three years' net base pay in view of the special circumstances of the case;

(g) *To award* the Applicant as costs, the sum of $7,500.00 in legal fees and $500.00 in expenses and disbursements."

Whereas the Respondent filed his answer on 3 June 1998;

Whereas the Applicant filed written observations on 29 September 1998;

Whereas, on 12 October 1998, the Respondent filed comments on the Applicant's written observations;

Whereas, on 30 October 1998, the Applicant submitted an additional document;

Whereas, on 10 November 1998, the Tribunal put questions to the Respondent, to which he responded on 11 November 1998;

Whereas, on 13 November 1998, the Applicant submitted comments on the Respondent's 11 November submission;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 22 March 1965, on a three-month fixed-term appointment as Guide Trainee with the Department of Public Information (DPI). Her appointment was extended, and on 19 September 1967, the Applicant was transferred to the Office of Conference Services as Conference Officer at the G-3 level. She separated from service on 20 December 1967. The Applicant re-entered the

service of the UN on 15 January 1968, as a Bilingual Clerk, at the G-3 level, in the Office of Public Information. On 1 May 1968, the Applicant was transferred to UNDP, where she received a permanent appointment on 1 May 1969. She was promoted to the G-4 and G-5 levels on 1 April 1971 and 1 January 1975, respectively. The Applicant transferred to the UN Department of Conference Services on 1 April 1976, on a fixed-term appointment at the P-2 level, having been assigned from UNDP to that department starting 13 October 1975. After receiving a permanent appointment on 1 February 1980, she was promoted to the P-3 level, as Editor, on 1 April 1980. On 16 June 1980, the Applicant transferred to DPI as Information Officer. From 23 June to 20 November 1989, the Applicant was temporarily assigned to UNTAG, Namibia, as Electoral Supervisor. From 22 June 1995 to 25 February 1996, she was temporarily assigned to the Mission Civile Internationale en Haïti (MICIVIH) as Human Rights Observer. She separated from service upon retirement on 31 May 1996.

On 30 July 1991, the Chief, Central News Section informed the Director, Information Products Division (IPD), DPI, that the Applicant refused to follow his instructions with respect to her work assignments. On 12 August 1991, the Director, IPD, DPI, and the Chief, Central News Section, met with the Applicant to discuss her duties and responsibilities in the Central News Section.

From 14 August 1991 to 22 October 1992, the Applicant was on certified sick-leave. On 19 October 1992, the Applicant requested the Senior Personnel Officer, Office of Human Resources Management (OHRM), and the Acting Executive Officer, DPI, to transfer her out of the Central News Section and to reassign her to any available assignment within DPI, but not in IPD. On 23 October 1992, the Acting Executive Officer, DPI, informed the Applicant that she had been reassigned to the Yearbook section.

On 3 November 1992, the Applicant informed the Acting Executive Officer, DPI, that she felt that she had been the object of discrimination by the Director, IPD, but that she agreed to the decision concerning her reassignment 'for the time being' despite the stressful

nature of the new assignment. The Applicant took up her duties with the Yearbook on 4 November 1992.

On 14 December 1994, the Director, Media Division, DPI, requested the Executive Officer, DPI, to return to the Central News Section the P-3 post on loan to the Yearbook Section. On 30 December 1994, the Deputy Executive Officer, DPI, informed the Executive Officer, DPI, as follows:

> "The supervisors whom [the Applicant] had accused of discrimination against her are no longer in the Media Division and therefore it would seem that there is no impediment for her to return to the Central News Section as [the Director, Media Division, DPI,] has requested."

On 27 January 1995, the Executive Officer, DPI, informed the Applicant that she was to report for duty with the Central News Section, Media Division, effective 1 February 1995.

On 2 February 1995, the Chief, Central News Section, notified the Executive Officer, DPI, that the Applicant had not reported for duty on 1 February 1995 as instructed, and that she had not informed him or anyone else in the Section of the reason for her absence.

In a Note for the File dated 21 February 1995, the Executive Officer, DPI, described a meeting held with his Deputy and the Applicant. During this meeting, the Applicant "stated categorically that she would not comply with the instruction" to report to duty with the Central News Section, requesting instead "a little time to try and obtain a mission assignment." The Applicant was advised that the Department would assist her in obtaining a mission assignment but that, in the interim, she had to report for duty as instructed. The Applicant did not report for duty.

On 6 March 1995, the Executive Officer, DPI, reminded the Applicant that she had been instructed to return to her former post in the Central News Section. The Executive Officer, DPI, further informed the Applicant, "unless you return to take up your functions

in the Central News Section immediately, the Department will have no alternative but to take disciplinary action against you."

On 8 March 1995, the Applicant, through a representative, informed the Executive Officer, DPI, that she would request a review of the decision to reassign her and that pending such a review, the Applicant would not report to the Central News Section.

On 13 March 1995, the Applicant requested administrative review of the decision to reassign her to the Central News Section, complaining of harassment and the refusal of her supervisors to complete her PERs for the prior nine years.

On 14 March 1995, the Director, Media Division, DPI, wrote to the Assistant Secretary-General, OHRM, recommending that the Applicant be separated from service for abandonment of post. The Applicant was informed on 4 April 1995, by a Personnel Officer, OHRM, that OHRM would not act on the Department's recommendation "since no provisions of the ST/AI/400 apply to her current situation."

On 23 May 1995, DPI released the Applicant on mission assignment. The Applicant was assigned to MICIVIH from 22 June 1995 to 25 February 1996.

On 11 June 1995, the Applicant lodged an appeal with the JAB.

On 24 October 1996, the JAB adopted its report. Its considerations and recommendation read as follows:

"**Considerations**

41. The Panel first dealt with the Respondent's contention that all the issues in the appeal other than her reassignment to the Central New Section, could not be considered because they were time-barred, the Appellant having failed to act within the time limit of staff rule 111.2.

42. The Panel noted that the UN Administrative Tribunal has recognized that where a claim relates to a pattern of harassment or other conduct spread over a period of time, it is not barred because individual incidents in the pattern were not challenged within the time limits applicable to them.

43. The Panel therefore considered the allegations of harassment but did not find that sufficient evidence had been supplied to prove its existence. It was evident that there were disagreements related to the staff member's assignment between her and her superiors and that because of them the relations between them were strained. However, the mere fact that the Appellant considered her assignment to the Central News Desk as unacceptable, did not constitute harassment.

44. Similarly, the withholding of two longevity steps does not signify a denial of Appellant's rights, as the award of longevity steps is conditional on the staff member's overall satisfactory service. This relates not only to the quality of the staff member's performance but also to conduct during the relevant period. Both are subject to the judgement of the staff member's superiors.

45. On the other hand, the Panel found that the failure over a long period of time to supply PERs for the Appellant's service was violation of the applicable rules, depriving the staff member of the possibility to receive proper consideration for promotion or change of assignment.

46. As it is the duty of the Administration to see to it that PERs are prepared regularly and on time, failure to do so entitles the applicant to compensation.

Recommendation

47. The Panel therefore recommends unanimously that the Appellant be paid compensation equivalent to six months net base salary, as at the time of her separation from service, for the denial of her rights."

On 27 November 1996, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the JAB report and informed her as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has taken note of the finding of the Panel that sufficient evidence had not been supplied to prove the existence of harassment and that the withholding of two longevity steps did not signify a denial of your rights. He has noted the finding of the Panel that performance evaluation reports (PERs) for your service had not been prepared over a long period of time depriving you of the possibility to receive proper consideration for promotion or change of assignment. He has also noted the unanimous recommendation of the Panel that you be compensated in the

amount of six months net base salary at the rate at the time of your separation from service.

The Secretary-General has decided to accept the findings of the Panel but not the entirety of its recommendation. He has decided to compensate you in the amount of $500.00 for the fact that your PERs were not prepared over a long period of time affecting your possibility to receive proper consideration for promotion or change of assignment."

On 7 May 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The JAB erred when it failed to find evidence of discrimination.

2. The Respondent's failure to prepare PER's for the Applicant for nearly ten years is clear evidence of an abuse of authority and of discriminatory treatment.

Whereas the Respondent's principal contentions are:

1. Reassignment of the Applicant back to the Central News Section, DPI, was within the discretionary authority of the Administration and did not violate her rights, nor was it arbitrary or discriminatory.

2. The Applicant's other pleas are not properly before the Tribunal because her request for review did not include those claims and, in any case, they are time-barred.

3. The Applicant has been adequately compensated for irregularities concerning her performance evaluation reports.

4. The Applicant's request for the award of costs is without merit.

The Tribunal, having deliberated from 28 October to 20 November 1998, now pronounces the following judgement:

I. The lengthy written submissions by the parties, along with their responses to the questions put by the Tribunal during the proceedings, were sufficient to render an oral hearing unnecessary in this case.

II. The Applicant, who has now retired from UN service, appeals from a decision of the Respondent to award her $500 as compensation for the failure over a period of years to conduct performance evaluation reports (PERs). According to the Applicant, this failure deprived her of the right to receive proper consideration for promotion or change of assignment. In addition, the Applicant's other principal request is that the Tribunal order the Respondent to pay to the Applicant the value of two longevity steps. According to the Applicant, these too were denied her due to the Respondent's failure to provide PERs and as a result of harassment and discrimination by her supervisors. Finally, the Applicant requests that the Tribunal order that she be considered as having been promoted to the P-4 level with retroactive effect from 1991.

III. First, the Respondent contends that the Applicant's arguments relating to harassment by her supervisors, denial of her within-grade salary increment in 1991, and failure to promote her in 1991, are time-barred. With respect to the Applicant's allegations concerning harassment, it is clear from the documentation on file that there was ongoing friction between the Applicant and her supervisor. In this regard, the Tribunal concurs with the JAB's finding that "the Panel therefore considered the allegations of harassment but did not find that sufficient evidence had been supplied to prove its existence. It was evident that there were disagreements related to the staff member's assignment between her and her superiors and that because of them the relations between them were strained. ..."

In addition, the Tribunal is satisfied from the record that the Applicant, by her apparent unwillingness to cooperate with her supervisors and her refusal to recognize their authority, also may have contributed to the strained relations. With regard to her claims for

non-promotion and denial of within-grade salary increment, the Tribunal considers that they are time-barred since the Applicant did not initiate the review and appeals process within the time limits prescribed in the rules.

IV. The file reflects that there were numerous irregularities in the handling of assignments and PERs for the Applicant. In December 1991, the Applicant was eligible for a longevity step increase. It was denied, in the Tribunal's view, as a result of the absence of a PER and the existence of a negative memorandum regarding her conduct that had been prepared by a newly promoted supervisor who had been in the position for only a few months. The Applicant asserts that the supervisor, a former colleague of the Applicant's, intended to harass her. The Tribunal notes that, at the time the negative memorandum was written, a draft PER signed by the First Reporting Officer, rated individual categories of her performance as either "excellent" or "very good". However, this document was not in the file because it had not been completed.

V. Following the denial of the longevity step, the Applicant lodged a complaint with the Panel on Discrimination and Other Grievances, which, however, failed to resolve the issue. The following years of the Applicant's tenure show a troubling pattern of the Applicant failing to report for assignment.

VI. On 14 August 1991, the Applicant went on certified sick-leave for 14 months. In March 1995, her supervisor recommended that she be considered as having abandoned her post. The Administration rejected this recommendation. Between 1989 and 1996, the Applicant volunteered for and served on a number of field missions. The Respondent argues that the absence of PERs, covering the period 1986-1996, was a result of her being detailed to field missions in which she should have been evaluated by a different

department, and that the failures to prepare PERs were not a result of any animus by the Respondent.

VII. The Tribunal has emphasized the need for the Administration to respect the rights of staff to have timely PERs available for consideration in decisions regarding promotion (cf. Judgements No. 198, Lane (1975), No. 412, Gross (1988), and No. 539, Bentaleb (1991)). The right exists also in regard to consideration of a staff member for reassignment. The Tribunal is in agreement with the JAB and the Secretary-General in finding that the failure to provide PERs over a period of about ten years disadvantaged the Applicant in her attempts to secure other posts. The Tribunal decides that the Applicant should be compensated for this violation of her rights. It considers, however, that $500 is insufficient for that purpose.

VIII. The Tribunal is also of the view that the lack of a PER for the period 1986 through 1990, was the principal reason for denying her the longevity step due in 1991. The Tribunal does not agree that the supervisor's negative memorandum should have been given more weight than the draft PER, and thus finds that the Applicant should have received the increase in 1991. The Tribunal decides that this injury must also be redressed. On the other hand, the Tribunal is not persuaded that the Applicant would have received the second longevity step if PERs had been completed during the period 1990 through 1996.

IX. The Tribunal orders the Respondent:

(1) To pay to the Applicant an amount equivalent to the longevity step increase for which she was eligible in 1991;

(2) To pay to the Applicant the amount of three months net base salary at the rate in effect on the date of her separation from service.

The above amounts are to be paid in addition to the $500 she has already received.

X. The Tribunal rejects all other pleas, including the Applicant's request for costs.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary

United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/901
20 November 1998

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 901

Case No. 979: ABU SALEM

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Kevin Haugh;

Whereas, on 17 February 1997, Husein Abu Salem, a staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting:

"a) The Report of the recommendation of [the] Survey Team to DAHR [Department of Administration and Human Resources] on the survey which was conducted in May 1994.

b) Salary increase of 30% across the board to be implemented retroactively from 1st of May 1994 to match [the] effective date of the comparator['s] increase."

Whereas the Respondent filed his answer on 29 October 1997;

Whereas the Respondent submitted, as annex 4 to his answer, the Report requested in the Applicant's first plea;

Whereas the Applicant filed written observations on 25 January 1998, in which he revised his pleas as follows:

> "1) The 12% which were increased for grades 1-13 effective 1 Oct. 1994 [should] be applied across the board (including grades 14-20) retroactively, effective 1 May 1994.
>
> 2) The 15% that were increased across the board on 1 January 1996 [should] be applied to match the effective date of the comparator's increase which is 1 May 1994."

Whereas the Applicant filed an additional document on 8 February 1998, attaching a list of signatures of staff members on whose behalf the Applicant filed his application;

Whereas, on 19 March 1998, the Respondent filed an additional document;

Whereas, on 22 April 1998, the Applicant filed an additional document;

Whereas, on 21 June 1998, the Respondent filed an additional document;

Whereas, on 3 August 1998, the Tribunal decided to adjourn consideration of the case until its next session, to be held in New York starting 20 October 1998;

Whereas, on 14 August 1998, the Tribunal put questions to the Respondent, to which he provided answers on 1 October 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 23 September 1959, on a temporary indefinite appointment as an area staff member, in the post of Teacher, at the grade 5 level. He has served continuously thereafter in different capacities and, since 24 January 1993, has occupied the post of Principal, Damascus Training Centre, Syrian Arab Republic (SAR), at the grade 16 level. In his capacity as Chair of the Area Staff Union, SAR, he filed the present application on behalf of himself and other UNRWA area staff members in SAR.

During the period of 11-16 May 1994, members of the Compensation and Management Services Division of the Department of Administration and Human Resources (DAHR), UNRWA, Vienna, visited Damascus to investigate the conditions of service for the Agency's area staff members in SAR. On 25 May 1994, the group issued a report of its survey, recommending, inter alia, "an increase of 25% to the base salaries of area staff in the Syrian Arab Republic to maintain a reasonable relationship with the comparator ..." and noting that the cost of such increase to the Agency would be approximately US$3.2 million per annum. On 27 June 1994, the Director, DAHR, advised the Chairman, Administration and Management Committee (AMC), of the findings of the survey and recommended committing either US$10 million or $12 million to effect a salary increase for area staff throughout UNRWA. On 6 July 1994, the Acting Chairman, AMC, advised the Commissioner-General that there were insufficient funds to cover either recommendation. Thus AMC proposed that the Commissioner-General identify, without thereby committing, $10 million to plan the framework for possible salary increases; linking the 1994 salary increases to cuts in expenditures; and increasing SAR area staff salaries by 18 per cent with effect from 1 May 1994, 20 per cent with effect from 1 July 1994, and 25 per cent with effect from 1 October 1994.

On 13 September 1994, the Commissioner-General announced in Transmittal Memorandum No. 58 (Cod.A/59/Rev.25/Amend.50), to all staff subject to the Area Staff Regulations and Rules that:

> "Following the survey of Area Staff salaries and benefits in relation to the comparator's salaries and benefits and taking into account the large deficit in the current budget biennium and the ongoing austerity measures, Area Staff salaries in the Syrian Arab Republic at grade 01 through grade 13 and grade 14 through grade 20 will be increased by 12.0% and 5.0% respectively, effective 1 October 1994."

On 19 September 1994, the Area Staff Union, Executive Committee (ASUEC) wrote to the Commissioner-General expressing "surprise" and "frustration" at the "meager

increase", and requesting him to reconsider the increase and take corrective action. On 20 September 1994, the Director, DAHR, responded on the Commissioner-General's behalf to the Chairman, Area Staff Union, explaining that "there were not sufficient funds available even for the salary increases that were granted" and that "the Commissioner-General had to impose $7.5 million worth of budget cuts on Agency activities in order to be able to meet staff costs including the salary increases that were recently announced ..." He noted that "with the announced increases, the level of Area staff salaries in SAR will continue to compare quite favourably with that of the comparator." After further exchange of correspondence, on 6 November 1994, the Applicant, in his capacity as Chairman of the Area Staff Union, SAR, requested the Commissioner-General to review and reconsider the decision in the Transmittal Memorandum No. 58.

On 4 January 1995, the Applicant lodged an appeal with the Joint Appeals Board (JAB) "on behalf of all staff members in SAR".

On 5 January 1995, the Director of UNRWA Affairs, SAR, informed the Applicant that his appeal to the JAB would be treated by the Agency on an individual basis, pursuant to area staff regulation 11.1(A). He explained, inter alia, that under the area staff pay policy issued on 21 August 1990, salary increases depend on the availability of funds.

The JAB adopted its report on 1 November 1995. Its evaluation and recommendations read, in part, as follows:

"...

C. The Board noted that the results of the salary survey conducted in SAR in 1994, i.e. the report of the survey team containing their recommendation and also the recommendation of the Administration and Management Committee on this subject as submitted to the Commissioner-General, are not in the file. The Board was convinced that these documents are necessary in assessing this case and, therefore, requested access to them.

The Board also raised inquiries to the Administration about the results of the salary surveys that were conducted in the Fields in 1994, and the way

available funds were allocated between those fields for purposes of salary increases in 1994, i.e. in conformity with the relevant provisions of the pay policy.

The Administration failed to provide the Board with all advisory material contained in the report of the salary survey team as well as the recommendation of the Administration and Management Committee. It also did not provide the Board with the amount of available funds for salary increases in 1994 and the exact way those funds were allocated between the different Fields.

The Board here records and indeed stresses that these documents and information should have been made available to the Board to enable it to perform its advisory role as provided for in the Area Staff Rules and to submit its recommendation to the Commissioner-General.

D. In the absence of the above vital information, the Board had no recourse but to depend on the available documents and other Agency publicized relevant material that could shed light on this issue, and concluded the following:

...

... the Board established that the SAR staff were at a disadvantage varying from 7.5% (for Grade 1) to 20.5% (for Grade 16) by comparison to the previous relationship with the Comparator prior to the increase. In other words, the purchase power of the take home pay has been diminished accordingly.

In this context, the Board believes that the salary increase given to the SAR Field effective 1 October 1994 was not proportional to the increase in the cost of living.

(ii) The salary increase was more to the disadvantage of the higher grades. Hence, the Board contests the Administration's argument that, after the increase, the SAR salary scale remained favourably comparable with that of the Government (the Comparator), which may be correct in absolute figures, but when compared with the Comparator's 30% increase across the board and with the relationship that existed, prior to the increase, between the UNRWA scale and that of the Comparator, this 'comparative favourability' claimed by the Administration, is materially reduced by 7.5% to 20.5% as established above.

(iii) The salary scale in SAR Field suffered a compression of about 7.4% after the increase by comparison to the previous scale which caused a material distortion to the relationship between the applied remuneration and the given responsibilities for classified posts. In other words, the responsibilities remained the same but the relevant remunerational differences between them narrowed.

(iv) In addition to the above, the SAR salary scale after the October 1994 increase converted to US dollar is the lowest among the Fields, despite the facts that:

a. the International Staff salary scale in SAR is the highest among the Fields,

b. the post adjustment multiplier in SAR as established by the United Nations is the highest among the Fields and comes second after Austria, and

c. the TSA rates in SAR are the second highest among the Fields.

E. Based on the above, and in view of the Administration's failure to provide the Board with the requested information, the Board resolved that there are material indications which suggest that something went wrong with the SAR salary scale after the increase, and that the Area Staff Pay Policy has not been fully complied with.

IV. RECOMMENDATION

In view of the foregoing, the Board unanimously makes its recommendation that the decision to increase SAR salaries effective 1 October 1994 by 12% for Grades 1-13 and 5% for Grades 14-20, be reviewed."

On 20 December 1995, the Officer-in-Charge, Headquarters, announced in Transmittal Memorandum No. 64 (Cod.A/59/Rev.25/Amend.56), to all staff subject to Area Staff Regulations and Rules, that area staff salaries for SAR would be increased by 15% across the board with effect from 1 January 1996, over and above the increases already granted in October 1994.

On 24 January 1996, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "...
>
> You will note that the Board has recommended that the decision to increase salaries in the SAR Field, effective 1 October 1994, be reviewed. However, the Board did not have all the material which it felt necessary to enable it to perform its advisory role; therefore, the Board'.. recommendation was not based on all the relevant documentation. In view of the above, I have decided exceptionally that your appeal should be referred back to the Board, together with the documentation which the Board requested, so that the Board can make a recommendation based on the full record. Since both parties may have additional comments to make, they should be given the opportunity to make additional submissions for consideration by the Board, in accordance with any procedural requirements set by [the] Secretary, Area Staff Joint Appeals Board.
>
> ..."

A newly constituted JAB adopted its report on 7 October 1996. Its evaluation and recommendation read as follows:

> "...
>
> C. The Board had access to the results of the salary survey conducted in SAR in 1994 except the report of the survey team containing its recommendation on this subject, [where] OIC, DAHR in his IOM explained that '[i]t is not possible to make available the advisory material contained in such documents as the recommendations of the AMC, as this is internal documentation consisting of the advice of staff organs to the Commissioner-General'.
>
> The Board also had access to the results of the salary surveys that were conducted in the Fields in 1994, and the way available funds were allocated between those Fields for purposes of salary increases in 1994.
>
> D. By reference to DAHR's letter of 27 June 1994, addressed to the Chairman, Administration and Management Committee, the Board noted that DAHR

recognized under item 2 entitled Findings paragraph (b) 'The analysis also indicates that the comparator's net income moved up by about 20% to 26% due to the across the board increase of 30% in the base salaries and the related increase in allowances', the across the board increase by the comparator was effective 1 May 1994.

IV. RECOMMENDATION

In view of the foregoing, the Board unanimously makes its recommendation that the decision appealed against be reviewed and that the 12% and the 5% which were increased effective 1 October 1994 be applied in a retroactive date which is 1 May 1994 and that the 15% that were increased across the board in 1 January 1996 be applied also in a retroactive way to match the effective date of the comparator which is 1 May 1994."

On 12 November 1996, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"... The Board noted that the comparator's salary increases were effective 1 May 1994 and that the increase in the comparator's net income was about 20% to 26%. The Board recommended that the administrative decision be reviewed and that 1 October 1994 salary increases be backdated to 1 May 1994 and further that the 1 January 1996 salary increase (of 15% for all Area staff members in SAR) be also backdated to 1 May 1994.

I have carefully reviewed the Board's report and noted its conclusions. The matter at issue was whether the Agency correctly applied its pay policy. This required an analysis of the policy, including the overriding qualification of '*available funds*'. By contrast, the Board, having noted that the Area Staff in SAR had not received simultaneous and identical salary increases to those of employees of the comparator, made recommendations to alleviate that situation. I cannot accept the recommendations of the Board because they are not the result of an application of the facts of this case to the Agency's pay policy. Accordingly, your appeal is dismissed.

..."

On 17 February 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The salary increase of 12% that had been applied to grades 1-13 with effect from 1 October 1994 should be applied across the board, retroactive to 1 May 1994, i.e., the effective date of the comparator salary increase. The 15% increase effective 1 January 1996 should also be applied retroactively to 1 May 1994. The decision to increase the salaries of area staff grades 1-13 only 12% and grades 14-20 only 5% was arbitrary. The area staff in SAR have the lowest salaries of any of the area staff in other fields, despite the similar economic conditions under which area staff in all UNRWA fields live.

2. The Applicant properly appeals on behalf of other staff members because, at the time of the initial appeal, he was the elected chairman of the Area Staff Union, and he has been expressly authorized by the area staff to make this application.

Whereas the Respondent's principal contentions are:

1. The Applicant has no standing to make an application on behalf of others.

2. The Applicant has failed to show that the administrative decision that he challenges is procedurally defective or vitiated by bias or prejudice.

3. The salary increase was in accordance with the Agency's Pay Policy, and the Agency properly and fairly discharged its duties to the area staff of SAR, including the Applicant, under that Pay Policy. Prior to introducing the salary increase, the Agency had conducted a survey to compare the UNRWA salaries to those of the comparator and had taken into account the availability of funds, in accordance with the Pay Policy.

The Tribunal, having deliberated from 8 July to 3 August 1998 in Geneva, and from 6 to 20 November 1998 in New York, now pronounces the following judgement:

I. The Applicant presented his application on behalf of all members of the Area Staff Union (ASU), SAR. The Respondent contests the receivability of this application on the grounds that the Tribunal's Statute does not permit a representative action to be brought by one member on behalf of others, citing paragraph 2 of article 2 of the Statute, but noting, however, that persons whose right might be affected by a judgement of the Tribunal are permitted to intervene under the Tribunal's statute.

II. Article 2 of the Tribunal's Statute reads:

> "1. The Tribunal shall be competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. ..."

In the first case brought before the Tribunal, (cases 1 to 15: *Aubert and 14 others and Intervention No. 1: Hall*), a staff member filed an application for intervention on behalf of the Staff Committee. Disallowing such intervention, the Tribunal applied a reasoning, the terms of which are entirely pertinent in the present case:

> "The applicant for intervention invokes her right to represent the interests of staff members of the United Nations who hold permanent contracts and who, according to the applicant for intervention, would be entitled to submit individual and separate applications for intervention;
>
> Whereas the competence of the Tribunal is defined strictly by the terms of its Statute as approved by the General Assembly of the United Nations;
>
> The Tribunal is competent to hear and pass judgement upon applications alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members (article 2, paragraph 1, of the Statute);
>
> ...

Whereas the terms of article 2, paragraph 2, state explicitly that the Tribunal is only open to 'any staff member' of the Secretariat of the United Nations or to 'any other person' [who can show that he is entitled to rights under any contract or terms of appointment], and the Staff Association cannot, by its very nature, be deemed to be covered by this provision."

III. The Tribunal, therefore, will not receive the application as a class action, and receives the application as if made only on behalf of the Applicant. It must do so in order to consider the merits of this application. If the Tribunal were to find in the Applicant's favour, the Commissioner-General could extend the terms of the judgement to other staff members.

IV. Addressing the substance of the case, the Tribunal remarks that the area staff Pay Policy Statement issued by UNRWA in 1990 plays an essential role in this matter. This policy is relied on by the Respondent and not contested by the Applicant. According to the Pay Policy Statement, "the Agency will conduct regular reviews of area staff pay in conjunction with comparator(s) pay and decide on adjustments required, if any. Adjustments in any given year for all Fields and Headquarters will be made at the same time, normally in the second half of the fiscal year." (Emphasis added)

Paragraph 4 of that Pay Policy Statement reads, in relevant part, as follows:

"In determining how *available funds* will be allocated between fields during these salary surveys, the Agency will take into account:

(A) The relationship between UNRWA pay and that of the comparator(s), [as defined in 5 below] through salary surveys ...;

..." (Emphasis added)

V. Salaries, then, are fixed and adjusted according to the level of salaries paid by the comparator to its employees, in this case the Syrian government. If surveys show that in comparison to UN salary level is inferior to that of the comparator, available funds must be

allocated to the different fields in order to increase salaries where necessary so that salaries paid in each UN field and their comparator are equal. In fact, it seems that UN levels usually compare favourably with the comparator's levels.

VI. The Syrian Government (comparator) increased its salaries by 30 per cent across the board, effective 1 May 1994. As a result of a salary survey conducted in the various duty stations in 1994, the Acting Chairman, Administration and Management Committee sent a report to the Commissioner-General. By then, the Syrian Government had already made the increase effective, and increases were anticipated in Jordan, Vienna, and Lebanon.

The Comptroller reported that funds were insufficient to cover any of the two scenarios proposed by DAHR (that either US$ 12 million or US$ 10 million be identified to cover a possible salary increase). It was accepted that, due to financial constraints, a recommendation would be issued to the Commissioner-General concerning the overall financial framework in which the pay policy would be implemented. Changes in the fields would then be taken into account within that framework. It was also understood that such increases "would have to be linked to cuts in expenditure elsewhere in the budget."

VII. On these grounds, a new memorandum from the Acting Chairman, AMC, to the Commissioner-General recommended that the amount devoted to expected salary increases in all the five Fields of UNRWA would reach a ceiling of $7,500,000. "Distribution of that amount would be based on proposals from DAHR following official governmental decrees raising comparator incomes. AMC agreed to recommend a salary increase for area staff in the Syrian Arab Republic of 20 per cent, with effect from 1 September 1994."

VIII. The Commissioner-General decided not to follow that recommendation. Instead, he granted an increase of 12 per cent to area staff, grades 1 to 13, and of 5 per cent to area staff, grades 14 to 20, with effect from 1 October 1994. On 1 January 1996, however, an

across-the-board increase of 15 per cent was given to area staff in SAR "on the basis of the results of the last comprehensive survey of Area staff salaries and benefits in relation to the comparator's salaries and benefits conducted in Syria ..."

IX. The case was examined by two different panels of the JAB. The first one recommended that the decision relative to the salary increases be "reviewed", based, in part, on the following:

> "On 1 October 1994, i.e. after the increase, UNRWA salary scale as a percentage of the comparator varied from 133 per cent (for grade 1, step 1) to 241 per cent (for grade 16, step 1).
>
> Based on the above, the Board established that the SAR staff were at a disadvantage varying from 7.5 per cent (for grade 1) to 20.5 per cent (for grade 16) by comparison to the previous relationship with the comparator prior to the increase. In other words, the purchase power of the take home pay has been diminished accordingly."

X. The JAB complained, however, that "the results of the salary survey conducted in SAR in 1994, i.e. the report of the survey team containing their recommendation and also the recommendation of the Administration and Management Committee on this subject as submitted to the Commissioner-General, were not in the file. The Board was convinced that these documents are necessary in assessing this case, and therefore requested access to them." The Commissioner-General convoked a new panel and provided it with the requested materials. This new Panel recommended that the Commissioner-General's decision be reviewed.

XI. Nowhere in the JAB's opinion or in the Applicant's contentions is it demonstrated that the relationship with the comparator is unfavourable to the UNRWA salaries; the assertion by the Respondent that that relationship *was still favourable to UNRWA* is nowhere contradicted. The JAB found that the relationship between UNRWA salaries and

those of the comparator remain favourable to UNRWA, even though in the past such relationship had been more favourable. It is to be noted that the Pay Policy Statement of 1990, requires only that area staff salaries compare favourably with those of comparator, without specifying the extent.

XII. The Tribunal carefully examined the Pay Policy Statement. It reached the conclusion that from the "available funds", the Commissioner-General has discretion in distributing the amounts among the different fields, provided that UNRWA salary levels have been compared to those of the comparator through salary surveys.

XIII. The Tribunal put questions to the Respondent concerning the exact meaning of "available funds". In his response dated 1 October 1998, the Respondent explained that:

> "For each biennium, UNRWA prepares a budget based on the needs of the Palestine refugee population, taking into account demographic growth, and needs arising from new developments. The budget is submitted to the General Assembly and thereafter the Commissioner-General has authority to incur expenditures to the extent that funds are available.
>
> ... The priority or 'core' items in the budget are those most directly related to the services provided to the Palestine refugees. Thus, funds are first allocated to the costs of the Agency's programmes in health, education, relief and social services, of which more than two thirds of UNRWA's funds are used for salaries of the Agency's 22,000 Area staff members.
>
> One non-core budget item is the 'Salary Reserve' for the anticipated costs of salary increases. As at 18 May 1994, as the result of salary increases granted to other Fields in 1993, but effective from 1 January 1994, the funded portion of the Salary Reserve for 1994 showed a deficit of USD 1,525,785. The amount of USD 7,766,000 in the Salary Reserve was unfunded. These figures are taken from paragraph 17 of a paper submitted to UNRWA's General Cabinet meeting on 30 and 31 May 1994 by DAHR (...). The Respondent also provides the Tribunal with extracts from the Cabinet minutes concerning the Agency's financial position at that time (a deficit for 1994 of USD 43,000,000) and discussion concerning the Salary Reserve (...)."

XIV. Obviously, it was in the Commissioner-General's power to decide on the budget cuts which he considered necessary in order that certain priorities be followed. The figures which were proposed for budget cuts (US$ 12 million, then US$ 10 million) were cut down to US$ 7.5 million. Those were the "available funds", once other necessities were taken into account by the Commissioner-General. The Applicant never proved that available funds existed to pay for the increases he was requesting.

XV. The Tribunal finds that, by allocating the available funds among the different fields, the Commissioner-General was acting within the parameters fixed by the Pay Policy Statement of 1990. If the powers of the Commissioner-General need to be curtailed, a new and different pay policy should be issued. The Tribunal may consider whether any improper motive or discrimination was behind the decisions taken by the Respondent regarding the allocation of funds that would render those decisions invalid. In the present case, however, no evidence was produced in that respect.

XVI. The claim is rejected in its entirety.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary